City of Ottumwa/Ottumwa Assn. of Professional Firefighters Local 395

2003-04

hand delivered

STATE OF IOWA

IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

BEFORE THE IMPARTIAL INTEREST ARBITRATOR, JOHN L. AYERS

In the Matter of:	
OTTUMWA ASSOCIATION OF PROFESSIONAL FIREFIGHTERS, IAFF LOCAL #395,	IOWA PERB NO. CEO #483/3
Certified Employee Organization, (Association)	
and	DECISION AND AWARD UPON REHEARING
CITY OF OTTUMWA, IOWA,	
Pubic Employer, (City)	

Pursuant to agreement of the parties, the rehearing in this matter was held on Thursday, April 29, 2004, commencing at 1:30 p.m. in the Hearing Room of the Iowa Public Employment Relations Board in Des Moines, Iowa. The rehearing was conducted with a telephone conference-call capacity. The Association appeared in person by Jack Reed, Captain in the Ottumwa Fire Department, and the City appeared by telephone from Ottumwa by Steve Rasmussen, City Administrator. Both parties were afforded full opportunity to present testimony and evidence, to cross-examine and to make argument on the sole matter, the "wages impasse item," at issue. The Arbitrator swore in all witnesses, tape-recorded the hearing and made notes of the testimony.

Based upon the record at hearing and at rehearing on the "wages impasse item," whether referred to specifically below or not, I issue the following Findings, Conclusions and Award.

PROCEDURAL MATTER

At rehearing, the parties agreed that the following six points as set out in the "Order Setting Rehearing" accurately state the steps leading to this rehearing:

> Pursuant to Section 17A.16, and Section 20.22, The Code, 2003, the Arbitrator finds:
>
> 1. The Interest Arbitration hearing in this matter was conducted on March 8, 2004.
> 2. The Arbitration Award in this matter was issued on March 12, 2004.
> 3. The Union's Application for Rehearing was received by the Arbitrator on March 20, 2004.
> 4. The Arbitrator faxed a copy of this Application to the Employer on March 25, 2004.
> 5. The Employer has filed nothing on this Application with the Arbitrator.
> 6. This Application raises a question as to the reliability of a material fact relied upon by the Arbitration Award, namely, whether or not a "1% increase = $6,381.67" as set out in the Employer's Exhibit "Tab 2, page 7," entered into the record at hearing.

FINDINGS

Included in the "Findings," at page 8 of the Arbitration Award, is a "Finding" taken from the above-cited City Exhibit which says, "1% increase = $6,381.67." This was, and is, a mistake! This mistake is at the heart of the Arbitration Award on the "wages impasse item" and at the heart of the Association's request for rehearing. As is also clear on this same page of the Award, this $6,381.67 figure was used to calculate the EMS pay at ". . . an approximate 3.1% wage increase." Also clear is that this $6,381.67 was used throughout the "Conclusions" section of the Award to explain the

Arbitrator's selection of the statutorily mandated "most reasonable" final offer. Here, and as usually may be the case, different facts bring about a different conclusion.

I find that the cost of a 1% wage increase is twice the $6,381.67 as referred to above, or approximately $12,763.00.

The EMS pay increase, identical in the final offers of both parties, and costed by both at $20,100, is therefore a 1.57% wage increase.

The Union's final offer on the wage impasse item is for a 2% "end loaded" increase plus the EMS pay. The Fact Finder's recommendation on this item is for a 2% "across the board" increase plus the EMS pay. The City's final offer is for a 1/2% increase plus the EMS pay.

The other "Findings" in the original Award were not disputed at rehearing and thus remain unchanged.

CONCLUSIONS

Chapter 20.22(9), The Code, 2003, provides in relevant part:

> 9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:
>
> *a.* Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
>
> *b.* Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
>
> *c.* The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

In my original award, the application of subsections "c" and "d" above were mooted as I found the City's to be the most reasonable offer based upon the mistake in the record referred to above.

Here upon this corrected record, these statutory considerations must be addressed. The City's testimony and argument that it is in financial difficulty is on the record. Not on the record, however, is any evidence of any kind that its financial condition is any different from other Iowa cities with which it could compare itself. This is especially noticeable because the City does state on the record that its financial condition is caused in part by strictures imposed upon all Iowa municipalities by the government of the State of Iowa. Therefore the possible benefit which might accrue to the City by such data is not available.

This conclusion must be understood, *pari passu*, with subsection "b." Since public sector bargaining began in Iowa in 1975, the pole star for neutrals summoned to assist in the resolution of interest impasses has been this subsection. Here, the legislature apparently strove to provide for the parties, as well as for neutrals, an impartial standard by which to measure positions taken in bargaining.

I think that vigorous observance of this statutory standard has been a major factor in keeping the number of interest arbitrations in Iowa quite low.

Here, the City has used no comparability group to assist in arriving at its final offer or in arbitration. The City says that gathering such data is difficult. Well, it can be, but it may not be more difficult than an impasse, and, as the City's representative explained to the Arbitrator at hearing, regarding another matter, "It's not rocket science!"

On the record here, the comparability group proposed by the Association is very persuasive evidence. The data from this group was used by the Association throughout its presentation–no picking and choosing of various groups for an item-by-item advantage. In addition, the data on the "wages impasse item" from this group of cities reveals "base wage increase" results alone, for 2004-2005, the contract year in question. This is important because this is the issue here. In contrast, the City's case seeks to include in its wage increase arguments, items other than "base wage increase" such as "savings from a change in insurance plan," "step and longevity increases." This additional information could possibly be relevant if the City could demonstrate how these additional matters were handled in a relevant comparability group. Without this knowledge, and in the face of record evidence of settlements elsewhere in the 3%

to 4% range, the City's "½%" final offer on wages, even with the EMS pay added to arrive at a total wage increase of just over 2%, is outside the comparability group range. And, it must be noted that on this record, the City has not claimed an inability to pay.

The City also argues that its final offer on wages compares well with its settlements with other bargaining units within City employment. This is a factor to be considered. However, this factor is far outweighed by the direction of 20.22.9(c) which provides for the arbitrator to be ". . . giving consideration to factors peculiar to the area and the classifications involved." This means that work done by firefighters in a relevant comparability group is better labor market, and legal, standard than that of other workers, such as police officers and street and parks workers.

For reasons discussed in the original award, the Association's final offer is not the most reasonable final offer.

The Fact Finder's recommendation of a 2% across-the-board wage increase plus the EMS pay equals a 3.57% wage increase and is within the range of the Association's comparability group.

For this and all the other reasons cited above, and based upon the record which now at rehearing corrects a mistake acknowledged by all, the recommendation of the Fact Finder is the most reasonable of the options available to the Arbitrator.

AWARD

The Recommendation of the Fact Finder is awarded.

Done at Des Moines, Iowa, this 11th day of May, 2004.

John L. Ayers
Impartial Interest Arbitrator

CERTIFICATE OF SERVICE

I certify that on the 12th day of May, 2004, I served the foregoing Award of the Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Jack Reed
427 Crestview
Ottumwa IA 52501

Steve Rasmussen
105 East Third Street
Ottumwa IA 52501

I further certify that on the 12th day of May, 2004, I will submit this Report for filing by ~~mailing~~ hand-delivering it to the Iowa Public Employment Relations Board, 514 East Locust, Des Moines, Iowa 50309.

John L. Ayers
Arbitrator